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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

FRANCISCO ANGUIANO,

Plaintiff and Appellant,

v.

IVAN E. BAYS,

Defendant and Respondent.

F055197

(Super. Ct. No. 376623)

OPINION

APPEAL from a judgment of the Superior Court of Stanislaus County. Roger M. Beauchesne, Judge.

Law Offices of Tony J. Tanke and Tony J. Tanke; Rancaño & Rancaño and David C. Rancaño, for Plaintiff and Appellant.

Herum Crabtree, Steven D. Crabtree and Natalie M. Weber, for Defendant and Respondent.

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Plaintiff appeals the dismissal of his case and the subsequent denial of his motion for attorney fees and expert fees. Plaintiff filed a notice of conditional settlement, indicating his case would be dismissed after he moved for an award of attorney fees. The

court set a dismissal hearing. Plaintiff did not file the motion for fees prior to the dismissal hearing. At the dismissal hearing, the court concluded plaintiff did not have good cause for failing to file the fee motion prior to the hearing, and dismissed the case. Plaintiff then filed a motion for attorney and expert fees; the court denied the motion on the ground it was untimely because it had not been filed prior to the dismissal. We conclude the court abused its discretion by dismissing the case as settled and reverse the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff sued his former employer for wrongful termination and failure to accommodate his disability. The parties reached an agreement for settlement, which was confirmed in a letter from plaintiff's counsel to defense counsel, dated July 24, 2007. The letter stated plaintiff would "accept \$15,000 as settlement in full" of the case. A settlement conference was held on September 10, 2007; the minute order bears the notation "may settle." The trial court confirmed the trial date of September 25, 2007, however. On September 18, 2007, plaintiff filed a notice of settlement of the case on a Judicial Council form. Plaintiff marked that the settlement was conditional, and indicated a request for dismissal would be filed "no later than (date): following motion for attorney fees." (Capitalization omitted.) On the scheduled trial date, the court entered an order dropping the case from the trial calendar, noting plaintiff's filing of the notice of settlement, and setting a November 28, 2007, hearing "for court's motion to dismiss."

By letter dated October 31, 2007, plaintiff's counsel sent defense counsel his billings for costs and attorney's fees, indicating he would move for an award of costs and fees, apparently if defense counsel would not agree to pay them without a motion. By letter dated November 27, 2007, defense counsel strenuously objected to the request for fees and costs, asserting the parties had settled the matter "in full," and no additional request for fees and costs was part of their agreement.

At the dismissal hearing on November 28, 2007, the court dismissed the case with prejudice; the minute order states: "After oral arguments the court finds that the motion for attorney's fees and costs was not filed timely." On December 20, 2007, plaintiff filed

a motion for attorney fees and expert fees pursuant to Government Code section 12965, subdivision (b), part of the Fair Employment and Housing Act. Defendant opposed the motion, asserting the court had already ruled that the motion was untimely. Plaintiff replied that attorney fees and costs are recoverable after judgment.

When the motion was heard on January 25, 2008, the court posed the question whether it had the authority or jurisdiction on its own motion to reconsider its prior ruling that the fee motion was untimely. Concluding that issue had not been sufficiently briefed, the court continued the hearing of the motion and requested further briefing on that issue.

At the continued hearing on February 28, 2008, the court's tentative ruling was to deny the motion for fees; the tentative ruling recognized the court's authority to reconsider its prior ruling, but concluded the prior ruling was correct. At the hearing, the court expressed its doubt that the parties had reached an agreement to settle, because there did not appear to be a meeting of the minds on entitlement to additional attorney fees. Both parties asserted a settlement had been reached. Plaintiff argued that, when a settlement agreement is silent as to statutory attorney fees and costs, case law indicates the prevailing party is entitled to recover such fees and costs. Defendant, however, asserted the agreement was for a "settlement in full" for a specified amount, and that agreement precluded any additional award of fees or costs. The court concluded that, because it had dismissed the case with prejudice, it did not have jurisdiction to set aside the dismissal and put the case back on the trial calendar due to the settlement failure. It opted to maintain the status quo. The court adopted its tentative ruling, but added its view that there was no meeting of the minds regarding recovery of attorney fees; based on the lack of meeting of the minds, the court concluded it would be an abuse of its discretion to entertain plaintiff's motion for attorney fees. Plaintiff appeals from the dismissal of his action and from the denial of his motion for attorney fees.¹

¹ At the time plaintiff filed his notice of appeal, only a minute order for dismissal of the action had been filed; no signed judgment of dismissal had been entered. (Code Civ. Proc.,

DISCUSSION

I. Standard of review

The decision to dismiss plaintiff's case was made pursuant to California Rules of Court, rule 3.1385 (rule 3.1385), which is a trial management provision enacted pursuant to the Trial Court Delay Reduction Act (Gov. Code, § 68600, et seq.). (See *Irvine v. Regents of University of California* (2007) 149 Cal.App.4th 994, 1001 (*Irvine*).) "Since trial management is a discretionary area, the proper standard of review for a challenge to trial management orders is abuse of discretion. [¶] Discretion is abused whenever it exceeds the bounds of reason, all of the circumstances before it being considered. [Citations.] In exercising its discretion, the court does not have absolute and unlimited power; it must act with an impartial discretion guided and controlled in its exercise by fixed legal principles. [Citations.]" (*Moyal v. Lanphear* (1989) 208 Cal.App.3d 491, 498.) On appeal, we will not disturb the trial court's exercise of discretion unless its order was a clear abuse of discretion and resulted in a miscarriage of justice. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566)

II. Trial Court Delay Reduction Act and Rule 3.1385

The Trial Court Delay Reduction Act (the Act) imposes on judges "the responsibility to eliminate delay in the progress and ultimate resolution of litigation, ... and to compel attorneys and litigants to prepare and resolve all litigation without delay," from commencement to disposition. (Gov. Code, § 68607.) At the same time, courts "must abide by the guiding principle of deciding cases on their merits rather than on procedural deficiencies. [Citation.]" (*Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 398.) "When the two policies collide head-on, the strong public policy favoring

§ 581d.) We requested briefing regarding whether there was a final, appealable judgment of dismissal. Plaintiff then caused a signed judgment to be filed. We take judicial notice of that document, pursuant to plaintiff's request. Because a final, appealable judgment of dismissal has now been entered, we deem plaintiff's appeal to be taken from that judgment and review on the merits. (Cal. Rules of Court, rule 8.104(e).)

disposition on the merits outweighs the competing policy favoring judicial efficiency. [Citation.]” (*Ibid.*)

The Act authorizes the court to “impose sanctions authorized by law,” including dismissal or striking of pleadings, “if it appears that less severe sanctions would not be effective.” (Gov. Code, § 68608, subd. (b).) Sanctions for violations of the California Rules of Court may be imposed, but “[i]f a failure to comply with an applicable rule is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party’s cause of action or defense thereto.” (Cal. Rules of Court, rule 2.30(b).)

Among the rules adopted by the Judicial Council to implement the Act is rule 3.1385, which provides:

“(a)(1) If an entire case is settled or otherwise disposed of, each plaintiff ... must immediately file written notice of the settlement or other disposition with the court and serve the notice on all parties [¶] ... [¶]

“(b) Except as provided in (c) or (d), each plaintiff ... must serve and file a request for dismissal of the entire case within 45 days after the date of settlement of the case. If the plaintiff ... does not do so, the court must dismiss the entire case 45 days after it receives notice of settlement unless good cause is shown why the case should not be dismissed.

“(c) If the settlement agreement conditions dismissal on the satisfactory completion of specified terms that are not to be performed within 45 days of the settlement, the notice of conditional settlement served and filed by each plaintiff or other party seeking affirmative relief must specify the date by which the dismissal is to be filed. If the plaintiff or other party required to serve and file a request for dismissal within 45 days after the dismissal date specified in the notice does not do so, the court must dismiss the entire case unless good cause is shown why the case should not be dismissed.” (Rule 3.1385, headings omitted.)

“[T]he Judicial Council formulated California Rules of Court, rule 3.1385 as a case management tool for delay reduction, designed specifically to ‘assist courts in identifying inactive cases from the active cases that may require judicial attention.’ [Citation.]” (*Irvine, supra*, 149 Cal.App.4th at p. 1001.) This rule “reflects a pragmatic approach to conditional settlements. The case has been concluded and unless there is a

breach of the settlement agreement, there is no further need for an appearance by the parties or for the court to monitor the file. In keeping with the fast track concept, this rule properly balances “the need for expeditious processing of civil matters with the rights of individual litigants.” [Citation.]” (*Interinsurance Exchange v. Faura* (1996) 44 Cal.App.4th 839, 843, discussing Cal. Rules of Court, former rule 525, containing provisions similar to those of rule 3.1385, but applicable to municipal court cases.)

The purpose of the rule is to encourage parties who have settled their dispute to expeditiously complete performance of the settlement terms and dismiss the case. It allows the court to clean up its calendar by dismissing cases when they have been successfully settled and the terms of the settlement have been carried out, with the exception of the filing of a request for dismissal. The rule is not designed to punish parties for moving slowly on their settlement, but to motivate the parties to complete their settlement without unnecessary delay, to provide additional time if there is some impediment to completion within the prescribed time, to remind the parties that the court is affected by their delay in dismissal, and to permit the court to dismiss a case when the plaintiff has neglected to do so.

III. Dismissal of Plaintiff’s Action

A. *Conditional settlement*

Plaintiff filed a notice of settlement which indicated the settlement was conditional. Where the Judicial Council form required plaintiff to fill in the date by which he would file a dismissal, plaintiff failed to provide a date, and merely indicated a dismissal would be filed “following motion for attorney fees.” Pursuant to rule 3.1385, plaintiff was required to serve and file a request for dismissal by the dismissal date specified in the notice; if he did not do so within 45 days after that date, the court was required to dismiss the case, unless he showed good cause for not dismissing it. The court’s dismissal hearing should have been set no earlier than 45 days after the date for dismissal specified in the notice.

After receiving the notice, the court did not notify plaintiff it was defective and require him to provide a date by which he would file the dismissal so that the court would

know when to set its dismissal hearing; nor did the court inform plaintiff of the defect and itself set a date by which plaintiff was to file a dismissal. Rather, the court simply set a dismissal hearing approximately 70 days after the notice of settlement was filed, as if it were an unconditional settlement.

The November 28, 2007, dismissal hearing was not reported and neither party submitted any declaration to the trial court describing the proceedings that took place that day. The only record is the minute order, which indicates the action was dismissed with prejudice at the request of both plaintiff and the court. The order also contains a finding “that the motion for attorney’s fees and costs was not filed timely.” The court subsequently treated that finding as a binding, substantive ruling that the time for filing a motion for attorney fees had passed, barring consideration of such a motion.

The question before the court at the dismissal hearing was whether the case had been settled and was ready for dismissal, or whether there was good cause to not dismiss it. One of the terms of the settlement was that defendant was to pay plaintiff \$15,000. Plaintiff asserts in his briefs that the payment has not been made; nothing in the record indicates it has been made, and defendant has not contradicted the statements in plaintiff’s brief.

If the settlement was conditional, as represented in plaintiff’s notice of settlement, then the filing and hearing of a motion for fees was a term of the agreement that was to be fulfilled before dismissal was entered. Thus, in determining whether to dismiss, the factors for the court to consider included whether that condition had been met and, if not, whether plaintiff should be allowed more time to meet it before dismissal of the case. The court apparently concluded the condition had not been met and no good cause for allowing more time was shown, so it dismissed the case.

Dismissing the case and precluding the subsequent filing of a motion for attorney fees without first attempting other reasonable means of achieving compliance with the delay reduction standards favored efficiency above the pursuit of justice. The court’s ruling resulted in the dismissal of the action before the condition was met, effectively depriving plaintiff of his motion for attorney fees because of his attorney’s failure to file

the motion before the dismissal hearing. It was the attorney's responsibility to set a date for dismissal in the notice of conditional settlement and to file the motion and have it heard prior to that date. The effect of the court's action was to penalize plaintiff for his attorney's dilatory conduct. Any penalty for counsel's failure to comply with the delay reduction rules, however, must be imposed on the attorney, without adversely affecting the party's claims. (Cal. Rules of Court, rule 2.30(b).) Consequently, while it may have been appropriate to impose monetary sanctions on plaintiff's attorney and to fix a deadline for filing the fee motion, it was an abuse of discretion in the first instance to dismiss plaintiff's action and bar his motion for fees, in the absence of any evidence indicating plaintiff himself contributed to the delay in filing the motion.

B. Unconditional settlement

Based solely on the notice of settlement, the court treated the settlement as conditional, and dismissed the case when counsel failed to promptly act to fulfill the condition. Defendant insists there was no agreement that a motion for attorney fees would be filed prior to dismissal. The absence of such an agreement would preclude a conditional settlement as described in the notice of settlement. Nothing in the record indicates the settlement was conditional except the notice of settlement filed by plaintiff. At least since the September 10, 2007, settlement conference, defendant has insisted at all times that the parties agreed to settle plaintiff's case "in full" for the agreed amount, and the agreement did not provide for a separate motion for fees. The letter in which plaintiff's counsel confirmed the settlement agreement did not mention attorney fees or a motion for attorney fees. Thus, the evidence concerning what the parties actually agreed to does not support a conclusion that the parties agreed a motion for fees was required to be filed before a dismissal was entered. The court essentially gave effect to the notice of settlement (which defendant strenuously asserts did not accurately reflect the settlement agreement), rather than the settlement agreement itself.

If the settlement was, in fact, unconditional, then the court complied with rule 3.1385(b) by setting a dismissal hearing at least 45 days after the notice of settlement was filed. At the dismissal hearing, the question for the court was whether the terms of the

settlement had been performed and the case was ready for dismissal. According to the letter confirming the agreement, the terms to be performed were the payment by defendant of \$15,000 and the execution by plaintiff of a release and dismissal, to be prepared by defense counsel. Plaintiff asserts without contradiction that defendant did not pay; there is nothing in the record to indicate whether a release was prepared or executed.

If the settlement was unconditional, there was no agreement that a motion for attorney fees would be filed before the dismissal, and the failure to file such a motion prior to the dismissal hearing would not bar presentation of the motion after dismissal. “The only decision before the court at a rule 3.1385 hearing is whether to dismiss the case or restore it to the civil active list.” (*Irvine, supra*, 149 Cal.App.4th at p. 1001.) If the settlement was unconditional, the court’s ruling that the motion for attorney fees was not timely was beyond the scope of the issues to be addressed at the dismissal hearing and was not supported by the terms of the settlement agreement. Additionally, making a ruling that precluded the filing of a postdismissal fee motion had the effect of sanctioning plaintiff, by depriving him of consideration of his motion for attorney fees on the merits because his attorney incorrectly filled out the notice of settlement form, characterizing the settlement as conditional.

Defendant argues, based solely on the minute order dismissing the case, that plaintiff requested dismissal of the action. The minute order is a printed form, with handwritten markings indicating the action was dismissed with prejudice at the request of plaintiff and the court. The only basis for dismissal was the settlement of the case. The comments by plaintiff’s counsel and the judge at the subsequent hearing on the motion for fees suggest plaintiff did not object to dismissal pursuant to the settlement, but strenuously maintained that the settlement agreement permitted him to bring a motion for fees and dismissal would not preclude such a motion. Thus, if plaintiff requested or consented to dismissal, he did so in the belief the case had been settled on the terms as he understood them. Nothing in the record suggests he requested or consented to dismissal in the absence of a valid settlement on those terms. The comments at the subsequent

hearing indicate plaintiff did not request or consent to a dismissal that barred a motion for attorney fees.

Defendant cannot have his cake and eat it too. He insists the settlement agreement did not include a condition that plaintiff file a motion for attorney fees (because plaintiff was not entitled to a separate award of attorney fees at all), yet he also contends the case was properly dismissed and the fee motion barred because of plaintiff's failure to timely fulfill this nonexistent condition.

In light of defendant's insistence that the attorney fee motion was not a term of the settlement agreement, and plaintiff's confirming letter, which does not include any provision for a motion for attorney fees, we conclude the court abused its discretion by dismissing the action as settled, with a finding that the motion for fees was not timely filed, and thereafter refusing to consider any such motion on its merits.

C. Meeting of the minds

In *Irvine, supra*, 149 Cal.App.4th 994, plaintiff and defendants reached a settlement agreement and plaintiff notified the trial court. The trial court set the matter for a dismissal hearing. Before the hearing date, plaintiff obtained documents containing information suggesting greater culpability of defendants, which plaintiff contended defendants had concealed. She refused the settlement check tendered by defendants and brought a motion to set aside the settlement. She asserted she would not have agreed to the settlement if the concealed information had been disclosed earlier. (*Id.* at pp. 998-999.) The trial court found nothing to justify vacating the settlement; it subsequently found plaintiff failed to show good cause to avoid dismissal pursuant to rule 3.1385(b), and dismissed the action. (*Irvine*, at p. 1000.)

On appeal, the court concluded a party's contention that an enforceable settlement has not been reached constitutes good cause for not dismissing the case pursuant to rule 3.1385(b). The court noted that, when a dispute arises regarding whether an enforceable settlement has been reached, the party seeking to enforce the settlement has several options: he may bring a motion to enforce the settlement pursuant to section 664.6, amend his pleading to assert the settlement and move for summary judgment, or bring a

separate action for breach of contract or equitable relief. (*Irvine, supra*, 149 Cal.App.4th at p. 1000.) Rule 3.1385 is not a means of enforcing settlements, but is a case management rule. “The only decision before the court at a rule 3.1385 hearing is whether to dismiss the case or restore it to the civil active list.” (*Irvine, supra*, 149 Cal.App.4th at p. 1001.) The dismissal hearing is not a vehicle for obtaining a determination that a purported settlement is unenforceable. (*Ibid.*) However, “[b]y alleging a dispute over whether the parties reached a binding settlement, plaintiff demonstrated good cause to restore the case to the civil active list.” (*Id.* at pp. 1001-1002.)

In *Levitz v. The Warlocks* (2007) 148 Cal.App.4th 531 (*Levitz*), plaintiff filed a notice with the court, indicating the parties had “agreed in principle” to a settlement. The trial court set a dismissal hearing pursuant to the predecessor of rule 3.1385. It granted two continuances of the hearing; the second order granting a continuance required that, if the matter was not dismissed by a specified date, the parties were to file ““detailed”” declarations prior to the hearing. (*Levitz*, at p. 533.) The parties could not agree to final settlement terms, and filed declarations informing the trial court of the failure to reach a final settlement despite the parties’ best efforts. Both parties asked that the matter be set for trial. At the dismissal hearing, the trial court stated plaintiff’s declarations contained too little detail. Unsatisfied with counsel’s oral elaboration on the facts, the trial court dismissed the action.

The court concluded that the settlement ““in principle”” of which the parties notified the court was not a settlement at all, because, as a contract, it was not binding until the parties agreed on all the material terms. (*Levitz, supra*, 148 Cal.App.4th at pp. 534-535.) The court contrasted this with a conditional settlement, which “involves a complete meeting of the minds but with some portion of it requiring more than 45 days for its performance.” (*Id.* at p. 535.) Because the parties did not reach a binding agreement, the settlement dismissal rule did not apply, and the trial court erred in dismissing plaintiff’s case. (*Ibid.*) The court also noted it was the attorneys who were responsible for the amount of detail contained in the declarations, and sanctions for violating pretrial rules were to be imposed on counsel, not the party. Further, the

defendants' declarations were also insufficiently detailed, but the defendants were rewarded, rather than penalized, by the dismissal. (*Id.* at pp. 535-536.)

“A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts. [Citation.] An essential element of any contract is ‘consent.’ [Citations.] The ‘consent’ must be ‘mutual.’ [Citations.] ‘Consent is not mutual, unless the parties all agree upon the same thing in the same sense.’ [Citations.]” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810-811.) In the instant case, the trial court’s dismissal hearing was set in response to plaintiff’s notice of settlement. While the parties both represented that they had reached a settlement agreement, they disagreed about whether the terms of the agreement permitted or barred a separate motion for statutory attorney fees. This raised a question regarding whether the parties had agreed to the same thing in the same sense, or whether they had failed to reach a meeting of the minds.

In *Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, where the parties’ settlement agreement was silent as to attorney fees and costs, it was held not to bar plaintiffs’ recovery of statutory attorney fees pursuant to Code of Civil Procedure section 1021.5, because such fees were not part of the cause of action, but incidents to it. (*Folsom, supra*, at p. 671.) Where it was defendants’ understanding no attorney fees would be sought, “[u]pon a proper application the trial court could have relieved [defendants] from a stipulation given through a misunderstanding.” (*Id.* at p. 679.)

These cases illustrate that, when the parties have not reached a binding settlement agreement, or a dispute remains as to whether such an agreement has been reached, the trial court is not authorized by rule 3.1385 to dismiss the case or to resolve that dispute. The proper course is to restore the case to the civil active list. The parties may then, by appropriate procedures, endeavor to enforce, clarify, or avoid the agreement.

The parties disagreed about whether their settlement precluded or permitted an additional award of attorney fees. Defendant took the position that plaintiff was not entitled to request attorney fees at all; this amounted to a denial that a motion for attorney fees was required to be filed before dismissal of the action. When plaintiff filed his

motion for attorney fees after the dismissal, he requested fees of almost \$60,000, almost four times the settlement amount. Thus, whether plaintiff retained the right to recover attorney fees in addition to the settlement amount was material to the settlement.

Despite this dispute about the terms of the settlement and whether the parties' agreement permitted plaintiff to request attorney fees at all, the trial court dismissed the action. Implicitly, the trial court found the parties had reached agreement on the material terms of the settlement. Despite a dispute about whether there was any agreement of the parties that a motion for fees could be brought at all, and despite the general rule that motions for attorney fees are to be made after judgment is entered (Cal. Rules of Court, rule 3.1702), the trial court dismissed the action in reliance on the existence of a valid settlement agreement, and effectively enforced defendant's version of the agreement by barring plaintiff's motion for attorney fees.

The trial court was not authorized at the dismissal hearing to resolve disputes about the terms of the settlement agreement. The only issue it could address was whether the case had settled and was ready to be dismissed, or whether the case should be returned to the civil active list for further proceedings. *Irvine* explained that a dismissal hearing is not to be used as a means of enforcing a settlement. Recognized methods of enforcing a settlement include safeguards to ensure that a settlement is enforced only when the parties actually agreed to it, and did so after "mature reflection and deliberate assent." (*Irvine, supra*, 149 Cal.App.4th at p. 1001.) A motion pursuant to Code of Civil Procedure section 664.6, for example, requires that the agreement be made in a writing signed by the parties or orally before the court. (*Irvine*, at p. 1001.) "It would be anomalous indeed for a defendant to obtain dismissal under rule 3.1385 over a plaintiff's objections where the settlement would not meet the requirements of section 664.6." (*Ibid.*)

While both parties represented to the court that the case had been settled, their understanding and explanation of the scope of the settlement differed. Defendant contended it was a settlement "in full," that encompassed all claims made in the case, including any claim for attorney fees and costs. Plaintiff contended the agreement settled

only the claims for damages asserted in his causes of action, and did not preclude a request for attorney fees and costs, which were merely incidents to his causes of action. Instead of recognizing the dispute and placing the case back on the civil active list because the parties had not reached a meeting of the minds as to all the material terms of their settlement, the trial court effectively resolved the dispute. This case vividly illustrates why a dismissal hearing is not a suitable proceeding in which to litigate the validity or enforceability of a purported settlement. The court effectively enforced a term found only in the notice of settlement, and not in defendant's version of the agreement or in plaintiff's written confirmation of it. By so doing, it essentially denied plaintiff a material benefit of the settlement he believed he had reached, without determining whether a settlement agreement had actually been reached or what the terms of that agreement were.

In light of the disagreement of the parties as to the material terms of the settlement agreement, we conclude the court abused its discretion by dismissing the case pursuant to rule 3.1385 and by finding plaintiff's motion for fees was barred as untimely. At the dismissal hearing, the court had the option of dismissing the case if it had settled and was ready for dismissal, or returning the case to the civil active list if it had not truly settled. The parties strenuously disputed whether the agreement permitted plaintiff to recover attorney fees in addition to the settlement amount. Defendant denied the agreement allowed a motion for fees, which necessarily included a denial that such a motion was required to be brought before dismissal of the case. The court subsequently recognized this lack of meeting of the minds in its oral ruling on the motion for fees. Because there was serious doubt as to whether the parties had actually agreed to the same settlement terms, the court should have restored the case to the civil active list, rather than dismissing it as if it had been settled.

The trial court abused its discretion by dismissing the case pursuant to a purported settlement, in light of the dispute between the parties that indicated an agreement had not actually been reached, as well as by precluding any consideration of the merits of plaintiff's request for attorney fees.

DISPOSITION

The judgment of dismissal and the order denying plaintiff's motion for attorney fees are reversed. The trial court is directed to return the case to the civil active list for further proceedings. Plaintiff is awarded his costs on appeal.

HILL, J.

WE CONCUR:

CORNELL, Acting P.J.

DAWSON, J.